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Thomas J. Linden

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West Islip Union Free School District and United Public Service Union (UPSEU)

Abstract

In the matter of the fact-finding between the West Islip Union Free School District, employer, and the Union Public Service Employees Union, union. PERB case no. M2017-018. Before: Thomas J. Linden, fact finder.

Keywords

New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT FINDING BETWEEN
WEST ISLIP UNION FREE SCHOOL DISTRICT

-And

PERB Case No. M2017-018

UNITED PUBLIC SERVICE EMPLOYEES UNION

-Before

Thomas J. Linden

REPRESENTATIVES

- A. For the School District
Bernadette Burns, Superintendent of Schools
Wendy Duffy, Assistant Superintendent for Business
Thomas M. Volz, Esq., Thomas M. Volz, PLLC
- B. For the Union
Kevin Boyle, UPSEU, President
Ronald Cleary, UPSEU
Kim Nowakowski, UPSEU
Alma Cruz, UPSEU
Cathy Weingarten, Shop Steward, Assistant Cook
Veronica Tardugno, Assistant Cook
Michael Backerman, Maintenance Mechanic IV
Jim Moran, Head Custodian
Jamie Triail, Grounds Supervisor

PRELIMINARY STATEMENT

Fact finding is part of the statutorily mandated process of alternate dispute resolution found in the Taylor Law. It is, by its nature, an extension of the bargaining process and comes about only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. The sole reason for the existence of any of these extensions of the process is to bring the parties to an agreement. The undersigned believes it is the fact finder's responsibility to help the parties pay a visit to the other side's perspective, even though they do not fully agree with it.

BARGAINING UNIT PROFILE

The bargaining unit is comprised of a range of title classifications that, according to Article II of the collective bargaining agreement, include, "cooks, assistant cooks, food service, custodial maintenance personnel, head and special custodians, driver messengers, bus dispatchers, auto mechanics and bus drivers." According to the Declaration of Impasse filed by the Union, there are currently 125 employees in the bargaining unit.

BARGAINING HISTORY

West Islip Union Free School District is in Suffolk County, New York. The West Islip UFSD (hereinafter, the "District") and the United Public Service Employees Union (hereinafter, the "Union" or the "UPSEU") are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period July 1, 2013 to June 30, 2016, which, notwithstanding its expiration, remains in full force and effect pursuant to Section 209-a(1)(e) of the Taylor Law. In an effort to negotiate a successor agreement, the parties participated in eight face to face meetings, the last one being held in March, 2017. After these negotiations failed to

generate a new agreement, the Union filed a Declaration of Impasse with the Public Employment Relations Board (hereinafter, “PERB”) on May 4, 2017. Shortly thereafter, PERB appointed Ms. Karen Kenney as mediator. Despite her efforts, no agreement was reached and subsequently, the undersigned was appointed as fact finder by letter of September 25, 2017. Another attempt was made to mediate this matter on October 30, 2017 by the fact finder, and this also proved unfruitful. What did come out of that meeting, however, was an agreement on the issues to be submitted to the fact finder.

ITEMS AGREED TO

Agreements made but subject to total agreement later, include CBA duration of four years, ending on June 30, 2020. Also, food service workers will receive one additional holiday in year two of the agreement and one more in year three. In addition, they will be eligible for a payout of unused sick leave. An additional longevity step is to be added at the 25 year mark amounting to \$850.00 for full-time and \$610.00 for part-time staff. Disability payment will increase to .28 cents per \$100.00 effective 7.1.2016. And finally, bus drivers will be paid overtime at the rate of time and one half for Saturday, Sunday and holiday work.

THE ISSUES

- Wages
- Snow Days
- Summer Hours
- Vacation Days
- Retiree Health Insurance
- Shift Differentials
- Vacation Scheduling
- Transportation Time Keeping
- Dental Insurance

Wages

District Position on Wages

The District's position, with respect to all economic items, revolves around one thing: ability to pay. The main structural piece of this is very simply, the property tax levy. It is difficult to overstate the effect that the mandated tax levy cap, instituted in 2011, which took effect on 1.1.2012, has had on school district collective bargaining. The District contends that the "tax levy limit" has "effectively limited a school district's ability to raise funds to meet the demands of union employees, pension plans, health care providers and the necessities of operating a school district."

The District also proffers that under the traditional measures of school district wealth, the District had an average Actual Valuation Per Total Wealth Pupil Unit (AVTWPU). Furthermore, the District's Combined Wealth Ratio has consistently been below the benchmark figure of 1.0 over the last three years. In other words, the burden on tax payers of the District is excessive as indicated by the below average relative wealth of residents in West Islip.

The District also illustrates that, although State Aid has marginally increased since the 2009-2010 school year, the percentage of the District's budget comprised of State Aid has decreased slightly (by .6%). The District contends that because it cannot look to other sources of revenue to fund labor cost increases, it has no choice but to ensure that its total increases are well within the tax levy limit. This limit has been consistently below 2% as the inflation factor provided in 2014-15 was 1.46%; in 2015-16, 1.62%; in 2016-17, 0.12% and in 2017-18, 1.26%. The District believes, based upon current trends, there is no reason to expect that the inflation factor will reach 2% in 2019-20 and 2020-21. It has adjusted its salary proposal accordingly.

The District has proposed "an increase to the salary schedules which would be equivalent to the Consumer Price Index ("CPI") increase, at a minimum of 1% and a maximum of 2%, plus

Step in each year of the agreement.” The District contends that this appropriately compensates members of the bargaining unit and rejects the Union’s proposal which would add .5% to the top step of each salary schedule in each year of the agreement. It points out that unit members at top Step are compensated at a similar or higher level compared to school districts in the surrounding area, arguing that the compounding effect of an additional .5% would put the pay increases above the CPI figures and would cost tens of thousands of dollars extra over the life of the CBA.

Finally, the District puts forth the fact that other bargaining units in the District, namely the Paraprofessionals Unit, Nurses Unit and Teaching Assistants Unit, have all agreed to increases as put forth in the above paragraph. The District sees no reason to treat UPSEU any differently with respect to salary schedule increases.

Union Position on Wages

The parties have essentially agreed to the 1% and 2% minimum and maximum parameters of pay increases, per year, through the life of the CBA. The sticking point is an additional .5% in each year proposed by the Union that would be added to the top step of each salary schedule. This would, therefore, affect all employees at top step in all salary schedules throughout the bargaining unit. The Union believes that because 55% of the Unit is on schedule, a .5% increase will only cost approximately .22% per year. According to the Union, over the course of the four year duration, this would cost the District an additional 1.75%. Because the funds would be added to top step, this would be a comprehensive benefit for all employees who have reached top step, regardless of when they reached it.

The Union argues that this is equitable because the bargaining unit as a whole, “has salaries that fall below the median of the Eastern Suffolk BOCES reporting Districts.” The unit has a .4% increment cost which the Union contends is well below that of other units in Suffolk County as well as other units within West Islip UFSD.

Fact Finder Discussion /Recommendation on Wages

It is important to note that in its brief and during discussions on this topic at our mediation session, the District repeatedly pointed to other bargaining units that have accepted the 1% - 2% formula as put forth by the District with no caveats or addenda. The fact finder believes, however, that in this instance a modification is justified, albeit modest. Therefore, I recommend a .5% adjustment to the top step of all salary schedules. This would happen only in the first year of the agreement and would provide a significant cumulative benefit to those employees at top step. Anything more than this, would have an unwanted and too strong impact on the District’s ability to pay.

SNOW DAYS

District and Union Position on Snow Days

The current CBA in Article 15, states in part, “One (1) time per year, custodial, grounds maintenance and mechanic employees shall be granted compensatory time for up to four (4) hours when school is closed and clerical employees are granted a day off.” The District has proposed an increase of one day to a total of two per year for the life of the CBA. The Union proposes that, while recognizing the cost of “premium pay,” without limit, employees receive (8) hours

compensatory time for each occurrence when school is closed, and custodial, grounds and maintenance report on these days.

There seems to be quite a bit of disagreement between the parties as to what happens in other school Districts. The parties do agree, however, that snow removal is a necessary and important component of custodial work and that employees are always told this during their employment interviews. The District believes their proposal is equitable and fair.

Fact Finder Discussion and Recommendation

Snow days is always a hot topic within operational units across the state and West Islip is no exception. The fact finder believes the parties made a fine effort to arrive at a solution but were unable to do so for a number of reasons. A stumbling block to agreement was the proposal of the Union that this benefit be applied “without limit.” The fact finder believes this is a bit of an over reach, but also understands the reason for the proposal, namely, super storms such as Sandy which wrecked havoc for weeks on almost all school Districts in western Suffolk County.

With this in mind I recommend the addition of one more “time,” making the language in Article 15 reflect three times per year said employees shall be granted compensatory time for up to four (4) hours when school is closed due to weather.

SUMMER HOURS

Union Position on Summer Hours

Currently, during July and August, unit members almost always work a four day week. This somewhat follows the clerical unit which each year votes to work four or five days and usually

votes to work a four day week in the summer. The Union, in addition to this, proposed working fifteen fewer minutes per day during summer recess. The District has consistently rejected this proposal.

The Union believes that reduced summer hours are the norm for school district operational units throughout Suffolk County and points to a small sampling of six such units. The Union contends that these units, which all contain custodial, grounds and maintenance employees, often work one hour per day less than during the school year.

District Position on Summer Hours

The District, on the other hand, contends that shortening the work day during the months of July and August would reduce hours worked during the very time of the year that operational staff is needed the most. The District argues that it is necessary to have operations staff work a full shift during the summer as there are many tasks that cannot be completed while school is in session, e.g. emptying every item from every classroom, cleaning all furniture, sealing and waxing all floors with five coats, etc.

During the summer months, all of the work listed above needs to be completed while at the same time various athletics, activities, camps and instructional programs are taking place. The District believes that the “confluence of work which needs to be completed” and the number of activities taking place on District grounds requires “precise and complex coordination and scheduling on the District’s part. The District believes that reducing the number of hours worked would be counterproductive to completing all the tasks talked about above.

Fact Finder Recommendation on Summer Hours

After reviewing all the data submitted and listening to the oral arguments presented at the October 30th meeting, it is the fact finder's recommendation that there be no reduction in summer hours as proposed by the Union. The fact finder is very familiar with the fine work done by units such as this and is also aware that much of the important work done by such units is completed during the summer recess. There were no compelling arguments put forth that would make a recommendation of fewer hours viable.

VACATION DAYS

Union Position on Vacation Days

Bargaining unit members currently receive, under Article VII,E., of the Agreement, ten vacation days after one year of service, fifteen days after five years, and twenty days after eleven years. The Union has proposed an additional level of twenty three days after twenty years of service. This would represent an additional three days. No other changes to levels were proposed by the Union.

District Position on Vacation Days

The District believes the current levels are sufficient and in line internally with other bargaining units that earn vacation days and with other bargaining units in surrounding districts.

It further explains that it would be required to provide an additional 75 days in the first year of the new CBA alone.

Fact Finder Discussion and Recommendation

The fact finder would like to note that the unit does seem a bit top heavy with top step people, and because of the longevity factor, total vacation time could be problematic. The fact finder does see justification for an increase of two days, however, after an employee reaches the twenty year mark, bringing the total up to 22 after 20 years. This benefit, however, would not take effect until on or after July 1, 2018. This should help mitigate the cost to the District. This would also provide additional incentive to employees who receive this benefit because at the time of reception they would most likely be frozen at top step.

DIFFERENTIALS

District Position on Differentials

Differentials paid by the District are part of Article IV, C., and include night shift and title differentials which provide additional premium pay for certain members of the unit. The Union has proposed an increase to the night differential, as well as an increase for specific titles. The Union has asked for an increase of \$200 to the night shift differential, increasing it from \$600 to \$800 annually. In addition, it is asking for a \$300 differential for the new Custodian III positions and the addition of \$1,500 for the Chief Custodian district-wide, Maintenance Mechanic IV, and Grounds III positions.

It is the District's position that all of these employees are currently paid appropriately and the last group is already compensated at a higher salary than other unit members due to the "responsibilities which come part and parcel with those positions." Because of this, any additional

proposed differentials is unwarranted. The District further contends that it pays its employees in the same or similar positions a higher or comparable salary as “measured against those employees in the same or comparable positions in a number of other surrounding districts.”

Union Position on Differentials

The Union has a few interesting takes on the question of night differentials, namely that they have been paid at the same amounts for too many years. In addition, the Union believes the amounts are lower than differentials in other nearby districts. The Union believes the proposal to increase the night differential is a modest one.

With respect to the Custodial III position, which is a relatively new position in the unit, the Union notes that this position was created after a Civil Service desk audit. This position is in lieu of a Head Custodian position wherein the District utilizes this position in a building with no students (rented by several tenants.) In addition, the title was added in the District after the stipend was first negotiated into the CBA, and the Union believes the stipend now warrants inclusion into the new CBA. With respect to the three \$1,500.00 title differentials, the Union offers extensive documentation as to the **value added** by these three individuals. This was also talked about at the hearing October 30th meeting, and the fact finder is indeed impressed by the work of the people in these titles. Arguably, over the last few years, money has been saved by the District due to the efforts of these departments and individuals.

Fact Finder Discussion and Recommendation on Differentials

The fact finder believes the Union position on night differentials is justified. I believe, however, that an incremental installation of this benefit is warranted and, therefore, recommend

that on July 1, 2017 the night differential be increased to \$700.00 and on July 1, 2019, the night differential be increased to \$800.00 .

It is also recommended that a \$300.00 differential be instituted for the Custodian III position. This should take effect on July 1, 2017. In addition, differentials of \$500.00 shall be instituted for Head Grounds III, Head Maintenance Mechanic IV and Chief Custodian – District Wide. The documentation for a title differential for these three positions was compelling, and the fact finder is convinced the District received extensive benefit by the overall reduction of outsourcing. These differentials, while much lower than proposed by the Union, are indeed recognition of the fine job done by these employees.

RETIREE HEALTH INSURANCE

Discussion of the District and Union Positions With Fact Finder's Recommendation

Both parties reported at the mediation session that this topic was the one issue among all others that they could not even come close to agreeing on. This is often a topic of fact finding and there seem to be no magic bullets. The fact finder believes strongly that the low level of active employee contribution rate cannot be ignored even though during these negotiations, the District did not pursue an increase in these rates. Current rates are 92.5% and 85% District contribution which will continue until June 30, 2020. The freezing of the low rate of employee contribution of 7.5% and 15% during the course of the agreement is no small matter since health insurance premiums have been rising on average 8% per year. Keeping these percentages for four years does not, of course, take away the increases in rates, but it does mitigate them. Many other school districts in Suffolk County have higher rates, especially for individual coverage.

That being said, the fact finder is sympathetic to the problem of employees who retire shortly before Medicare eligibility (age 65). The Union reports, correctly, that unit members cannot afford to retire at age 62 because the burden of paying the employee percentage of the premium is prohibitive. The only thing that might mitigate this, outside of an increase in the District's contribution, would be some type of retirement incentive. Said incentive is not before the fact finder. However, a recommendation and possible solution needs to be made because of the magnitude of the issue.

It is my recommendation that there will be no increase in the cost of the District portion of retiree health insurance contribution. In addition, I believe the parties might be mutually benefitted by working out and agreeing to a retirement incentive.

VACATION SCHEDULING

District Position on Vacation Scheduling

Because the District has experienced some difficulty managing vacation requests and scheduling for members of the operational staff, it has proposed the following protocol.

Vacation requests submitted by members of the operations staff thirty (30) or more days in advance shall be subject to the approval of the employee's immediate supervisor. The employee's immediate supervisor shall consider the appropriate levels of coverage necessary prior to granting or denying the vacation request.

For vacation requests made on fewer than thirty (30) days notice, the immediate supervisor may reject the request, however, the Director of facilities shall maintain the ultimate authority to determine whether to grant the request.

For the purposes of this article, the immediate supervisor shall be: the building Chief, and, if there is no building Chief, the Head Custodian for custodians; the Grounds III position for grounds employees; and the Maintenance Mechanic IV position for maintenance employees.

The immediate supervisor shall have the right to reject vacation requests in excess of two consecutive weeks. Such right shall be exercised reasonably. The employees named in Appendix "D" shall be excluded from this provision. (Already included in the CBA).

The District, with this proposal, is "merely seeking a reasonable protocol for the scheduling of vacations to ensure that the District is not understaffed." Apparently there have been too many last minute vacation requests which put pressure on supervisors to be accommodating to employees and to adequately staff the District's schools. The District is requesting the protocol language above to be placed in the CBA.

Fact Finders Recommendation

The fact finder recommends this language be entered into the new CBA.

TIMEKEEPING

District Position on Timekeeping

The District points out that there is, under Article V, (A)(4) of the CBA, entitled "Time Clocks," discretion to require unit employees, except Bus Drivers, to punch a clock when arriving and/or leaving the work place. It appears this provision has never been implemented and the District is now proposing two things. The first is that bus drivers, who are currently excluded, will now be required to be included in the time-keeping responsibility. The District contends that although bus drivers work varying hours, they should not be exempt from participating in time-keeping.

The District's other proposal regarding this provision, is to implement a timekeeping system which uses a more advanced method of timekeeping than the time clocks provided in the above cited article. Time clocks are a thing of the past and the District mentions doorway entryway systems, such as a key fob system or a computer log-in system. Both of these systems would be superior to a time clock system with respect to security, safety and syncing a system to the personnel department enabling it to maintain "appropriate and accurate records" regarding use of leave time.

Union Position on Timekeeping

The Union, while not pushing back on much of the foregoing was adamant that no type of biometric system be implemented such as fingerprint or retinal recognition.

Fact Finder's Discussion and Recommendation on Timekeeping

The fact finder believes that all members of the bargaining unit should be treated equally when it comes to any implementation of a time keeping system. Therefore, it is recommended that bus drivers participate in the same time keeping activities as other unit employees.

Security and safety are issues best explored on a global basis, with all bargaining units within this District. To have one bargaining unit agree to some type of electronic time keeping system without all bargaining units on board misses the mark. Of course, I can't recommend anything for any unit outside of this one. I can suggest, however, that some type of representational meeting be convened to deal with this issue. Real safety and security concerns are at stake here, and this type of meeting could go a long way to begin to fashion a system that works.

I believe current entryway systems are now sophisticated enough to tell central office or security the identity of everyone who is present in each school building in the event of a fire, lockdown or general emergency. If any type of biometric recognition system is implemented, it will be done so only with the agreement of the parties.

DENTAL INSURANCE

District Discussion of Dental Insurance

The District is proposing to eliminate the \$36.00 increase each year, effectively capping the District's contribution at \$958.00 per year. The District argues that because the amount contributed represents 100% of the cost of premium, it contributes more to the dental insurance premiums for UPSEU members than it does for any other unit. In fact, it believes it contributes a larger dollar amount annually than many surrounding districts. It further contends that it is only trying to "stem the continuous annual increase" which just so happens to rise by about \$36.00 per year.

Union Discussion of Dental Insurance

Article IX, B. of the Agreement, entitled "Dental Insurance," provides in part, the following:

Effective July 1, 2013, the District shall contribute up to a maximum of \$886.00 per participant per year toward dental insurance coverage for those employees of the unit eligible for health insurance coverage. The District's contribution as reflected herein shall be increased by \$36.00 in each year of the Agreement."

The Union is seeking to continue the provisions of this language and contends it only wants to update and continue something that is provided for all members provided with health insurance. The Union notes that health insurance is provided to 65 % of bargaining unit members as the remaining unit members are prevented from being covered due to constrictive hours worked each week.

Fact Finder Discussion and Recommendation

The fact finder believes that this benefit as provided in Article IX, B., should be modified and not left intact. It is, therefore, recommended that during the first year of the CBA the amount be \$ 00.00, in the second year \$36.00 and in the last two years of the agreement \$24.00. It is also recommended that there shall be no contract language requiring automatic contributions to the Dental Plan be increased beyond the expiration date of the agreement.

CONCLUSION

The parties have worked long and hard to reach an agreement. I hope this report leads to a long awaited and well deserved settlement. I know that eventually an agreement will be reached and hope that this blueprint helps to that end.

Respectfully submitted,

Thomas J. Linden

PERB Fact Finder

Bellport, New York

December 7, 2017

